Lalchand vs. Satyanarain

SB Civil 1st Appeal No.32/1992

Date of Order: 06th April, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Hemant Shreemali for the appellant.
Mr. Pradeep Shah for the respondent/s.

The present appeal is filed by the appellant against the judgment and decree dated 17th August, 1991 in civil original suit No.10/1987 whereby the Additional District & Sessions Judge , Bali dismissed the suit.

The plaintiff respondent Satya Narain filed a suit against the appellant defendant Lalchand alleging inter alia that a First Information Report was lodged by him on 11.06.83 at Police Station , Sumerpur that on 10.06.83 plaintiff took him to the shop of Durga Prasad and Umrao Singh. Putting him under threat, he was made to sign a cheque for Rs.1 lac and another cheque for Rs.50,000/- and two agreements were got signed by him.

On the basis of such information , a First Information Report No.43/1983 under Sections 365, 385, and 342 IPC was registered. The plaintiff was arrested on 22.08.83 and on 25.08.83 he was released on bail. After investigation by police the challan was filed on 29.01.86 under Section 147, 365 and 347 IPC. In this case the plaintiff alleged that he was discharged.

The case of the plaintiff was that defendant appellant Lalchand, under the name and style of M/s Lalchand Suresh Kumar, was dealing in oil. He used to sell oil being produced by Swastik Trading Cmpany . The oil produced and sold by such trading Company and the firm of appellant, used to be adulterated. He sold 700 tins of to M/s Behhari Lal Mishri Lal and to M/s Umrao Singh Suresh Kumar 500 tins and against them payment was received by appellant. When complaints were received, he on his on volition, executed the agreement and cheques. In the market this went around that he was transacting business in adulterated oil. To get rid of this, he lodged the First Information Report in which the plaintiff was arrested and released on bail and he suffered humiliation and thus sued the defendant for Rs.20,000/- by breaking up the compensation on various heads.

Defendant filed written statement and alleged that

plaintiff respondent is transacting business on petroleum goods. He is not aware of the loss of reputation to the plaintiff. He has further stated that he had purchased certain sealed tins from Swastik Trading Company . He was not aware whether the oil was adulterated or not. He was commission agent and no cheating was committed. The plaintiff was taken to the shop of Durga Prasad and there he was made to sign the two cheques and the two agreements and he has not committed any malicious prosecution against the plaintiff. On the basis of the pleading , following issues were framed.

> "1. क्या प्रतिवादी ने बिना किसी उचित पर संभाव्य कारण के वादी को जानबूझ कर हैरान एवं परेशान करने के उद्देश्य से झूठा एवं द्वेषपूर्ण अभियोजन किया ?
> 2. क्या वादी प्रतिवादी से वादपत्र के पद सं0 12 में उल्लेखित विवरण के अनुसार साधारण एवं विशेष हर्जाना पाने का अधिकारी है?
> 3. क्या न्यायिक मजिस्ट्रेट, दूसरी के निर्णय 21.1.86 के विरूद्ध माननीय उच्च न्यायालय में रीविजन याचिका प्रस्तुत की है-तथा उसका अंतिम निर्णय होने तक यह वाद परिपोषणीय नहीं है?"

Deciding issue No. 3 , the trial court held that there is a compromise in between Durga Prasad and the appellant and an

application was moved to the High Court where a revision petition was pending. The revision petition was dismissed as not pressed . On that application Lalchand had not signed because the matter was compromised in between the appellant and Durga Prasad. Satya Narain was not held debarred from instituting the suit.

The trial court , considering the case in issue No.1, opined that FIR was lodged on 11.06.83 whereas the incident was of 10.06.83. The appellant had received full payment for 700 tins and 500 tins. When things were talked about, he on his own volition , brought the cheques. The trial court noted certain important points in this relation. Those points are as follows :-

> "14. इस तरह जो महत्वपूर्ण तथ्य उत्पन्न होते है, वे इस प्रकार है:-
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> 1. प्रथम सूचना में 24 घंटे की देरी।
> 2. रूपये एक लाख पचास हजार के दो चैक जबरन लिखवाने व दो इकरार लिखवाने का मामला था जो साधारण घटना नहीं है।
> 3. प्रतिवादी व्यापारी था तथा सैकडों टिन तेल के बेचता था अर्थात् जानकार था कि ऐसे मामलों में तुरन्त कार्यवाही की जानी चाहिए तथा यह भी जानता था कि चैकों व इकरारनामों का क्या परिणाम है।

4. आरक्षी केन्द्र सुमेरपुर में ही है तथा सुमेरपुर मैन बाजार की यह घटना है।
5. कथित घटना की दिनांक 10.6.83 को प्रतिवादी ने प्रथम सूचना के अनुसार ही प्रतिवादी ने इस घटना के बारे में किसी को नहीं बताया।
6. प्रथम सूचना से ही यह भी स्पष्ट है कि कई व्यापारियों ने तेल की शिकायत की- प्रथम सूचना में ही स्पष्ट बताया गया है कि कई व्यापारी तेल की शिकायत लेकर बाद में आ गये।
7. वादी सत्यनारायण ने तेल नहीं खरीदा था तथा सत्यनारायण की किसी फर्म के पक्ष में चैक या इकरार नहीं था, उस हेतु चैक व इकरार लिख करके देना बताया गया है।
8. चैक बुक प्रतिवादी नहीं ले गया था तथा प्रथम सूचना के अनुसार मुन्नालाल जाकर के प्रतिवादी के यहाँ से चैक बुक को लाया।"

The trial court, further found that apart from the appellant, there is no eye witness of the incident. He has not been able to say that who brought the cheque book. If a person is made to sign cheques against his will, then he would narrate the entire incident and when he says that he is not aware as to who brought the cheque then his assertion cannot be said to be bona fide. Both the agreements had not been produced on record and , therefore, the trial

court held that adverse inference deserves to be drawn in relation to the agreement. The trial court found that if he was kept by force then he could have created hue and cry. shouts. Admittedly, there were no arms as alleged by the appellant. FIR was lodged after 24 hours. The appellant had accepted that he was prepared to take the oil tins back. He had received the payment and was bound to return the same. Thus, the trial court came to the conclusion that it was a business transaction.

The appellant had himself lodged a first information report registered as FIR No.42/83 against M/s Swastik Oil Mill that the oil was adulterated. Thus, the case against the appellant is bona fidely made out. His other witnesses have also not corroborated his story. He has not narrated the incident to any body immediately after the occurrence. The trial court came to the conclusion that the cheques were not written under force. The compromise was made only with Durga Prasad and the plaintiff Saty Narain cannot , therefore, be bound by that and, therefore, issue No.1 was held against the appellant.

On issue No.3, the trial court held that since the petitioner was arrested and remained behind the bars, he suffered

loss of reputation and thus a compensation of Rs.10,000/- was awarded against the appellant.

Arguing the case, the learned counsel for the appellant , urged that the criminal case was bona fidely made out against the plaintiff. It was a case where the plaintiff had employed coercive force against the appellant and made him to sign the cheques and the agreements and, therefore, no compensation was liable to be awarded.

Per contra, the learned counsel for the respondent plaintiff, submitted that false case having been made out and the plaintiff having suffered ignominy of remaining behind the bars, he was rightly awarded compensation. The order of the trial court dated 30.01.88 Ex.A/1 clearly states that the matter was compromised in between Lal Chand and Durga Prasad. They were the only signatories. The revision petition was dismissed as not pressed. Thus the discharge became final and Satya Narain plaintiff stood discharged. Thus , by all standards the prosecution against him was malicious.

I have given my thoughtful consideration to the arguments and have perused the record.

These are admitted facts that the plaintiff Satya Narain was arrested and he was discharged. The dispute related to a business transaction. According to the appellant himself, the Oil Company had supplied adulterated oil which was sold by Lal Chand, appellant. He had received the whole amount for the supplied goods. Then he agreed to take the oil tins back . It was his bounden duty to return the amount also and, therefore, the cheques were in ordinary course issued as repayment of the consideration received by him for oil. It was a natural consequence when oil was accepted back. In that view of the matter, the allegations of the First Information Report can not stand judicial scrutiny. The plaintiff had nothing to do with the signing of the cheque and the agreement which had not been filed by the appellant on record and in that view of the matter, adverse inference have been drawn by the trail court and rightly so.

In view of the aforesaid findings there is no force in the appeal and hence the same is dismissed.

(BHAGWATI PRASAD), J.

L.George